

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER COLT LEWIS,

Defendant-Appellant.

UNPUBLISHED
September 6, 2005

No. 253740
Jackson Circuit Court
LC No. 03-004096-FH

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

I. Overview

A jury convicted defendant Christopher Lewis of felonious assault¹ and sentenced him to three years' probation. He appeals as of right. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E). This case arose when Lewis intervened in a physical altercation between his fiancée, Tammi Fields, and her sister, Terri Gipson. While Gipson had Fields pinned to the ground, Lewis struck Gipson three times with a baseball bat, causing injuries that included a broken wrist.

II. Jury Instructions

A. Standard Of Review

We review claims of instructional error de novo.² Because Lewis did not object to the instructions as given, we review this nonstructural, constitutional claim for plain error affecting his substantial rights.³

¹ MCL 750.82.

² *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

³ *People v Carines*, 460 Mich 750, 752-753; 597 NW2d 130 (2000); *People v Watkins*, 247 Mich App 14, 28; 634 NW2d 370 (2001).

B. Use Of A Dangerous Weapon

Lewis asserts on that appeal the trial court erroneously instructed the jury on an essential element of use of a dangerous weapon to commit the assault, violating his rights under the Fifth and Sixth Amendments of the United States Constitution. The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.⁴ Rather than instructing the jury that they had to find that Lewis committed an assault with a dangerous weapon, the trial court instructed the jury that they had to find “that [Lewis] committed the assault with a baseball bat.” Accordingly, Lewis argues, the trial court failed to submit the question whether a baseball bat is a dangerous weapon to the jury, effectively deciding it as a matter of law.

We agree that the trial court’s instruction to the jury was plainly erroneous. “Whether an object is a dangerous weapon under the circumstances of the case is a question for the factfinder,”⁵ and the trial court’s instruction did not allow the jury to make this determination. However, we are convinced that this error did not affect Lewis’ substantial rights. The felonious assault statute, MCL 750.82(1), reads as follows:

Except as provided in subsection (2), a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty if a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2000.00, or both.

Michigan courts have recognized that the phrase “dangerous weapon” is not limited to those articles designed to function as such; rather, the phrase can apply to any instrumentality that ““was used as a weapon and, when so employed in an assault, dangerous.””⁶

In view of the complainant’s injuries, there was simply no reasonable argument to be made – and Lewis did not attempt to make one – that the baseball bat, as employed here, was not a dangerous weapon. Lewis admitted striking the victim with a baseball bat, and he did not contest the fact that the baseball bat caused the complainant’s injuries, which included a broken bone. Because the outcome would have been the same even if the jury had been properly instructed, the error does not require reversal.⁷

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

⁴ *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

⁵ *People v Norris*, 236 Mich App 411, 415; 600 NW2d 658 (1999).

⁶ *People v Lange*, 251 Mich App 247, 256; 650 NW2d 691 (2002), quoting *People v Vaines*, 310 Mich 500, 505; 17 NW2d 729 (1945) (glass mug was a weapon under sentencing guidelines).

⁷ See *Carines*, *supra* at 752-753; *Watkins*, *supra* at 28.